

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:)	CASE NO: 24-51195-mmp
)	CHAPTER 11
)	
RIC (LAVERNIA), LLC,)	San Antonio, Texas
)	
)	Monday, June 2, 2025
Debtor.)	2:21 p.m. to 3:29 p.m.
OTISCO RDX, LLC,)	
Plaintiff,)	CASE NO: 25-ap-05040-mmp
vs.)	ADVERSARY
RIC (LAVERNIA), LLC, ET AL,)	
Defendants.)	
RIC (LAVERNIA), LLC,)	
Plaintiff,)	CASE NO: 24-ap-05043-mmp
vs.)	ADVERSARY
MILESTONE CAPITAL CRE 1,)	
LLC, ET AL,)	
Defendants.)	

HEARING RE:

MOTION TO STRIKE DOCUMENT [DKT.NO.83];

MOTION TO DISMISS OR, IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT [DKT.NO.4];

STATUS HEARING ON MOTION FOR SANCTIONS [DKT.NO.83]

BEFORE THE HONORABLE MICHAEL M. PARKER,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE PAGE 2

Court Reporter [ECRO]: Danny Paez; Digital

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WITNESS TESTIMONY

NONE

DEBTOR'S EXHIBITS

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A THROUGH G

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1 San Antonio, Texas; Monday, June 2, 2025; 2:21 p.m.

2 --oOo--

3 **THE CLERK:** The last matters on the docket is on page
4 6, Adversary 24-5043, RIC Lavernia versus Milestone Capital.

5 **THE COURT:** Good afternoon, Mr. Hirsch.

6 **MR. HIRSCH:** Good afternoon, Your Honor, Kyle Hirsch
7 and Luke Graham on behalf of debtor and debtor in possession,
8 RIC Lavernia LLC in this particular adversary proceeding.

9 **THE COURT:** Okay.

10 **MR. HIRSCH:** I think we have another adversary
11 proceeding and a motion in the main bankruptcy case that are
12 also set for a hearing today as well as a motion to file by the
13 other side.

14 **THE COURT:** That's correct. We're calling them all,
15 trying to hold them altogether, so I'll call it the Milestone
16 adversary, 24-5043 and it is also the --

17 **THE CLERK:** Page 13.

18 **THE COURT:** Yeah, page -- the Otisco adversary, 25-
19 5040 and then motion in the case 24-51195. And then we had a
20 motion for continuance filed this morning. Come on up, come on
21 up, share the podium.

22 **MR. HIRSCH:** And in addition to representing RIC
23 Lavernia as debtor and debtor in possession and plaintiff in
24 the Milestone adversary, we also represent TIG Romspen US
25 Master Mortgage LP, which is a co-defendant in the Otisco

1 adversary.

2 **THE COURT:** I saw your supplemental disclosure on
3 that. Thank you, Mr. Hirsch. Please.

4 **MR. MCALPINE:** Thank you, Your Honor, my name is
5 Kiernan McAlpine and in this proceeding today I'm representing
6 Otisco RDX, LLC and I do not represent Milestone.

7 **THE COURT:** Okay.

8 **MR. MCALPINE:** I don't know if they have counsel.

9 **THE COURT:** Okay. Flurry of pleadings this morning.
10 Good afternoon, Mr. McAlpine, correct?

11 **MR. MCALPINE:** Yes, Your Honor.

12 **THE COURT:** And so I know you have a motion for
13 continuance but you just filed the motion for continuance in
14 the case and so when you ask for that to be set, the Court
15 agreed to set the motion for continuance, that's a motion for
16 continuance on Mr. Hirsch's motion to strike. But you never
17 filed -- you later filed a notice of motion but not a motion
18 for continuance in the Otisco adversary proceeding.

19 And so I don't really have a motion for continuance
20 pending in that proceeding, nor did I grant a setting for this
21 afternoon because nothing was filed in the case. You filed a
22 notice. So our procedures and maybe you're unfamiliar with
23 them, but our procedures the clerk's office has to go with kind
24 of what you file. And so we've been trying to figure out
25 everything that you want.

1 And then I also finally saw a motion to withdraw as
2 counsel. That has not been set this afternoon either. So
3 we'll hear that in the normal course unless you file some
4 motion to expedite the hearing, but otherwise we'll hear that
5 in the normal course.

6 **MR. MCALPINE:** I understand, Your Honor.

7 **THE COURT:** Okay.

8 **MR. MCALPINE:** I was filing the motion to continue on
9 an emergency basis in the main case, with the understanding
10 that it would be -- erroneous understanding that it would be
11 treated as a motion to consider both hearings that are both set
12 for today.

13 When I realized the potential issue that Your Honor
14 just explained to me about not having filed one in the
15 adversary directly, I filed a notice of motion in an effort to
16 incorporate it by reference because it's the same issues and
17 the same argument. If it's procedurally improper to have done
18 it that way, I -- that's on me. But I tried to address the
19 issue and get on the road to get here as soon as I -- as best
20 as I could, Your Honor.

21 **THE COURT:** Understood. So procedurally improper but
22 let's go forward as if we're proceeding first on the motion to
23 continue, both the motion to strike, and the hearing on the
24 motion to dismiss in the Otisco adversary.

25 All right. So I'll let you go first.

1 **MR. MCALPINE:** Thank you, Your Honor. This is a
2 situation where there's an alignment of interest between
3 Milestone and Otisco RDX, LLC. The lawyer that was both
4 official counsel of record for Milestone as well as strategic
5 lead counsel for Otisco RDX, LLC is Mr. Mercer, who passed away
6 on May 13 of this year tragically.

7 And the sort of -- the pursuit of both Otisco and
8 Milestone's interests in this proceeding was done under a joint
9 prosecution and defense agreement between those two parties.
10 And essentially Mr. Mercer was the one who was calling the
11 shots.

12 And, you know, the objection that I filed on March
13 26th as well as the adversary filed by Mr. Rayome under
14 Mercer's direction on May 1 at 2025 were done under the
15 supervision, with the oversight of Mr. Mercer.

16 I'm not a bankruptcy attorney. I'm a personal injury
17 attorney from Houston. The closest analogy to the situation
18 that we're in, Your Honor, that I can think of would be like an
19 indemnitor and indemnitee situation where the indemnitee has
20 friendly counsel that's not the counsel for the indemnitor, but
21 they're under the strategic direction of them.

22 Essentially what's occurred is following Mr. Mercer's
23 tragic passing, the client has been both looking for new
24 counsel, both as counsel of record for Milestone, as well as
25 counsel of record for Otisco. And what I've been told is that

1 it's likely they believe that they'll be able to find a
2 suitable replacement counsel within the next seven days.

3 Another problem that I've been aware of is that
4 retrieval of files from Mr. Mercer's office has been
5 complicated and delayed slightly. They've got a custodian now
6 with the State Bar who's helping them get his files from his
7 office. So that is still ongoing, but as I've been told that
8 the client expects to be able to have replacement counsel
9 that's able to move forward on this within the next week or so.

10 And we've asked for a continuance for 30 days from
11 today. And one of the reasons that we want Your Honor to
12 consider about why that would be just and fair relief under the
13 circumstances is it's my understanding that the plan
14 confirmation hearing is on August the 2nd. And, you know,
15 regarding the motion to dismiss, potentially the pleadings
16 deficiencies that are argued in the motion to dismiss can be
17 cured with leave of the Court to file an amended pleading and
18 anything that is left over from sort of the process of
19 conferring with opposing counsel could be set 30 days from
20 today.

21 And then the Court can, you know, grant RIC
22 Lavernia's motion to dismiss and sustain its objection, and
23 then move forward on August 2nd or if the Court would be able
24 to agree with what we think the Court should do, which is, you
25 know, overrule the objection, deny the motion, and then enter

1 an order consistent with that ruling.

2 So, in other words, we don't think that there's
3 prejudice to RIC Lavernia if this is continued briefly under
4 these somewhat extraordinary and unusual circumstances.

5 **THE COURT:** Okay. Mr. Hirsch?

6 **MR. HIRSCH:** Thank you, Your Honor. Kyle Hirsch for
7 both RIC Lavernia and TIG Romspen.

8 I'm still a little baffled why the motions were filed
9 yesterday and today. Mr. Mercer's passing was on May 13th.
10 These hearings have been set and noticed both before and after
11 Mr. Mercer's passing. I wasn't contacted by anybody on the
12 Otisco side until Friday when I heard from Mr. McAlpine asking
13 for the continuance.

14 So in the initial instance, I don't know that there
15 is an emergency necessarily that could not have been raised
16 sooner, for which we all may have had opportunity to adequately
17 prepare and investigate what these circumstances are.

18 With that said, I am also baffled by the argument
19 that Mr. Mercer was integral to the Otisco side. First of all,
20 as Mr. McAlpine noticed, there was an objection that was filed
21 under his signature. It was filed under a lawyer named Shea
22 Calavan (phonetic). The adversary was signed by an individual
23 named Justin Rayome. It was filed under an ECF credential for
24 Paul Kirkland. Those are four different lawyers at four
25 different law firms, all of whom appear to represent Otisco in

1 some way, shape or form.

2 Not one of those is a Kel Mercer colleague from his
3 firm, Mr. Mercer practiced at his own firm. As we discussed
4 last week when I was here on the fee application, we understand
5 that as it relates to Milestone where Mr. Mercer was the lead
6 counsel was counsel of record, setting this for a continued
7 hearing made sense.

8 But on the Otisco side, it's hard for me to even say
9 it, because it seems so emotionally uncomfortable, but it seems
10 like using Mr. Mercer's passing as an excuse to buy more time
11 may be what's at issue here.

12 The motion to strike was filed in April and the
13 response was due prior to Mr. Mercer's passing and there was no
14 response filed. So I'm not sure, to the extent Mr. Mercer was
15 providing guidance and oversight and litigation strategy, if
16 that means anything other than the motion to strike is
17 unopposed. So I don't know why we need a continuance on an
18 unopposed motion.

19 With respect to the adversary proceeding, I
20 respectfully disagree with Mr. McAlpine as far as whether there
21 are pleading defects that can be cured. I won't get into the
22 merits, but the allegations in the adversary proceeding for
23 which Mr. Graham is prepared to argue are clear and concise and
24 wrong. And there is evidence showing to the contrary.

25 Additional delay on a continuance basis for a

1 complaint that was signed by one lawyer and was filed by
2 another lawyer, neither of whom were Mr. Mercer again just
3 seems to be an opportunity for a replay or a redo or a pause
4 that shouldn't have anything to do.

5 And I also want to provide a little bit of context.
6 And I did this somewhat when I was here before, just to explain
7 the fees that had been incurred by the estate.

8 The Milestone litigation is an attempt to strip away
9 a lien that was asserted by a purported lender to the prior
10 owner of the property before the debtor. And that owner was
11 Otisco. It seems a little nonsensical that the lender and the
12 borrower would be under the same litigation strategy as it
13 relates to whether the lien given by the borrower should be
14 stripped away from the property that the borrower no longer
15 owns.

16 And whether the borrower's allowance of the property
17 to be lost at foreclosure should be unwound because of a
18 lender's lien. And with both the borrower and the lender under
19 the same rubric it seems to add a lot of credibility to our
20 arguments on Milestone that this is a sham lien and as to
21 Otisco, as to whether the foreclosure ever happened.

22 So again, I don't want to get ahead of myself on the
23 legal arguments, but the suggestion that Mr. Mercer had some
24 critical element of involvement on the Otisco side of things
25 seems pretty difficult to believe.

1 Mr. McAlpine did not refer to the other element in
2 his motion, which was the hospitalization and the medical
3 issues from Mr. Rayome, who was the lawyer that was involved in
4 filing the adversary. I made a list of several filings that
5 Mr. Rayome has been involved in since May 9th in other matters.
6 I'm happy to go through if you'd like.

7 **THE COURT:** Please.

8 **MR. HIRSCH:** So the hospitalization, according to his
9 declaration was on May 9th. On May 9th in a case Jetal
10 Capital, In Re Jetal Capital that's pending in the Southern
11 District of Texas Bankruptcy Court before Judge Norman that's
12 24-35761. On May 9th Mr. Rayome filed a notice of appeal, a
13 motion for leave to appeal and a motion to stay pending appeal.

14 On May 14th, he signed a request for a transcript of
15 a hearing. On May 22nd, he filed an emergency motion for a
16 continuance. And I have these docket numbers if that would be
17 helpful, I can add those.

18 **THE COURT:** Why don't you put them in the record.

19 **MR. HIRSCH:** Yeah. So the May 9th pleadings, notice
20 of appeal, Docket entry 205; motion for leave to appeal, Docket
21 entry 207; motion for stay pending appeal, Docket entry 208.

22 On May 14, signed request for a transcript, Docket
23 entry 225. On May 22nd, an emergency motion for a continuance
24 of a hearing on May 23rd was filed at Docket entry 239, again
25 that was filed under somebody else's ECF credentials by

1 Mr. Rayome.

2 And on May 27th, Mr. Rayome filed five notices of
3 appearance or notices of appeal, it looks like they're all
4 notices of appeal, maybe some were misfiled. Those are Docket
5 entries 246, 47, 48, 49 and 50.

6 Meanwhile in another case, the Galleria 2425 Owner
7 LLC case, that's also pending in the Southern District of Texas
8 Bankruptcy Court before Judge Norman that is bk-23-34815. On
9 May 28th there was a notice of appeal that was filed at Docket
10 entry 1037, signed by a different lawyer, G.S. Salavadi
11 (phonetic) but using Mr. Rayome's filing credentials.

12 So to say that from May 9th until today Mr. Rayome
13 somehow has medical conditions that prevented him to prepare
14 for today's hearing, given at least those, I didn't go back
15 what was happening in state court or other courts, those are
16 the ones that -- the cases that I knew he had some involvement
17 in. But it seems a little difficult to comprehend why he's
18 able to appear and be active in those cases, but he can't be
19 here today.

20 **THE COURT:** Okay.

21 **MR. HIRSCH:** I would ask that the motions for
22 continuance be denied and that we proceed today on the merits.

23 **THE COURT:** Okay. Thank you.

24 **MR. MCALPINE:** Your Honor, may I respond briefly to
25 the point that were raised?

1 **THE COURT:** Please.

2 **MR. MCALPINE:** With regards to their first claim,
3 there is an opportunity to file this earlier unless this motion
4 was filed on May 13, 2025, any date that it would have been
5 filed subsequently it could have been filed earlier.

6 The -- based on the circumstances that I was
7 referencing earlier regarding the custodian with the State Bar
8 where the client's been attempting to retrieve his file,
9 there's a Mr. Cleveland and a Mr. Rudd who have been engaged
10 with to complete that.

11 The client has advised that they believe they will
12 have replacement counsel within seven days. Additionally,
13 there was some thought that Mr. Rayome would be out of the
14 hospital.

15 Now, regarding the points that Mr. Hirsch was just
16 raising about the multiple other matters that Mr. Rayome has
17 made filings in since May 9th, the date of his hospitalization.
18 First of all, I'm relying on the unsworn declaration of
19 Mr. Rayome that he's been hospitalized and has not been able to
20 act as -- in the role of essentially Mr. Mercer's understudy on
21 this case.

22 The arguments about Mr. Mercer being essential still
23 apply to the fact that he's able to file things in other cases.
24 The fact is -- I can show Your Honor in camera e-mails for
25 example between myself and Mr. Mercer where the objection to

1 the plan confirmation was essentially ghost written by
2 Mr. Mercer and I agreed to file it, as -- based on sort of
3 indemnitor/indemnatee friendly attorney situation where
4 Mr. Mercer didn't want to appear in this matter.

5 And I didn't see any red flags associated with doing
6 that at that time, based on Mr. Mercer's reputation and based
7 on my few brief conversations with him. Suffice to say, he's
8 been acting as the strategic lead for Milestone and Otisco in
9 this case. And although there's been 18, 19 days since his
10 passing during which time the motion could have been filed, it
11 sort of came to a head at the end of last week when I was
12 notified of this. That the client had not been able to obtain
13 somebody to, you know, make that appearance for him and serve
14 in that role for him.

15 So, in other words, we're simply asking for a little
16 bit of latitude under the circumstances. I don't believe that
17 this will encumber or prejudice RIC Lavernia in any way, based
18 on the timing of the plan confirmation hearing and, you know,
19 the brief continuance that we're requesting, as well as the
20 fact that we think we may be able to resolve the issues
21 regarding alleged pleading deficiencies.

22 I simply don't understand why it wouldn't be
23 warranted under these rather extraordinary circumstances of his
24 unexpected passing, which nobody could have or reasonably would
25 have or did anticipate occurring beforehand. I mean, it's a

1 terrible situation and I understand what Mr. Hirsch was saying,
2 about how he felt like it was insensitive to imply that there
3 was exploitation of his death to try to get a delay. I mean,
4 Your Honor, frankly the client both Milestone who I'm not
5 representing, as well as Otisco have been scrambling and doing
6 everything that they can to try to deal with this frankly
7 bombshell that unexpectedly came 19 days ago.

8 So I believe the last point that I want to respond to
9 is that there wasn't a response to the motion to strike the
10 objection and that came due prior to Mr. Mercer's passing.
11 Well, that -- there may not be a document in the file that
12 states response to motion to strike, and the sole basis for the
13 objection was a lack of a judiciable interest, and therefore,
14 lack of standing, which has since, as of May 1, 2025 been
15 rectified by filing the adversary complaint, which raises the
16 issues that are laid out briefly in the objection.

17 So to the extent, the standing issue is mooted. The
18 circumstances explain why there was no response that was filed,
19 the stated standing is mooted due to the filing of the
20 adversary complaint. And, Your Honor, I need to fall on my
21 sword a little bit, I'm a personal injury attorney if I'm wrong
22 about that, I believe that it resolves the standing issue. But
23 if I'm wrong about that, I apologize. It's not intentional on
24 my part.

25 So, Your Honor, this is a situation that we have and

1 I'm asking the Court to exercise its discretion to allow for a
2 brief continuance for new counsel to be enrolled for the
3 resolvable matters without the Court's involvement to be
4 resolved and for any issues that remain before the Court to be
5 adjudicated in 30 days, at which point the Court can, you know,
6 grant the relief that it sees appropriate and then move forward
7 with the plan confirmation hearing in August.

8 **THE COURT:** Okay. Mr. Hirsch.

9 **MR. HIRSCH:** Nothing further, Your Honor.

10 **THE COURT:** Okay. A couple of things. First, the
11 Court will deny both motions for continuance. The oral one as
12 to the Otisco adversary proceeding and the written one filed
13 yesterday as to the motion to strike.

14 The -- I'm having a lot of trouble believing
15 Mr. Rayome. I would note that the unsworn declaration filed is
16 not signed by Mr. Rayome. A /s/ signature is not sufficient
17 and, Mr. McAlpine, your continued use and the Court already is
18 working on its show cause order about this, you can't sign
19 pleadings under your name and then have someone else use their
20 CMECF entry to file things. And I found those this morning
21 looking through the Court's docket. That's not an effective
22 filing.

23 And so as a practical matter, the Court will likely
24 strike your existing objection to plan confirmation as filed
25 inappropriately under your name by a Sean Calvin (phonetic) or

1 something like that. Bottom line is, that motion itself was
2 not effective because it's not signed by the person who
3 actually filed it.

4 So on a strategic -- procedural matter, it's out of
5 bounds. Also, I agree with Mr. Hirsch, number one, Mr. Mercer
6 is not counsel of record. And the fact that the parties might
7 have been relying upon him in no way should have affected your
8 obligation to file a motion for continuance well beyond the day
9 before the hearing on the matter.

10 Mr. Mercer was a fantastic attorney and this Court
11 will acknowledge that and I can understand why the parties
12 might have relied on his knowledge, but you are counsel of
13 record, Mr. McAlpine, and you are the one responsible going
14 forward.

15 Let me see. So let's proceed on the -- well, let's
16 first talk about the status hearing on the Milestone adversary
17 proceeding. That one Mr. Mercer was involved in, and so that
18 one the Court will reset to another time period and,
19 Mr. McAlpine, you want 30 days?

20 **MR. MCALPINE:** 30 days?

21 **THE COURT:** On the -- so on the Milestone adversary
22 proceeding, there is a pending motion for sanctions. And
23 Mr. Mercer was involved in that one and so I want to give --
24 you said your client Milestone, not your client, I'm sorry,
25 that's not your -- you're just here on the other two is what

1 you're saying.

2 **MR. MCALPINE:** I do not represent Milestone.

3 **THE COURT:** But you said someone was going to be able
4 to get counsel, is that just Otisco?

5 **MR. MCALPINE:** No, Your Honor, I believe both
6 Milestone and Otisco need counsel and --

7 **THE COURT:** Okay.

8 **MR. MCALPINE:** -- they can both get it.

9 **THE COURT:** Okay. All right. So I think what the
10 Court would like to do with respect to the motion to strike in
11 Milestone is push that out to --

12 **MR. HIRSCH:** The motion for sanctions on Milestone.

13 **THE COURT:** The motion for sanctions in Milestone,
14 that's correct, I think it's Docket 83.

15 **MR. HIRSCH:** Yes.

16 **THE COURT:** The motion for sanctions in Milestone
17 we'll reset that out to how about July 2nd at 9:30 a.m.?

18 **MR. HIRSCH:** That should work, Your Honor. My
19 colleague Justin Hanna will be handling it. If he's
20 unavailable, then I'll make myself available.

21 **THE COURT:** Okay. All right.

22 **MR. HIRSCH:** And you said 9 a.m.?

23 **THE COURT:** 9:30. 9:30 a.m.

24 **MR. HIRSCH:** Okay.

25 **THE COURT:** Okay. And then --

1 **MR. HIRSCH:** Is it possible to have that one
2 scheduled for the afternoon?

3 **THE COURT:** Yes.

4 **MR. HIRSCH:** If we schedule that for the afternoon,
5 that would allow some flexibility.

6 **THE COURT:** Yeah, we'll set it then at July 2nd at
7 1:30 p.m.

8 **MR. HIRSCH:** Thank you, Your Honor.

9 **THE COURT:** Okay? And then on the motion to
10 strike --

11 **MR. HIRSCH:** And I'm sorry to interrupt, Your Honor.
12 Should I be giving notice of that? I think it's a little
13 difficult at this point to give notice because I don't know who
14 I'm giving notice to.

15 **THE COURT:** Yeah. Well, you have -- was there anyone
16 other than Mr. Mercer on the file?

17 **MR. HIRSCH:** There was prior counsel, Mr. Stanton.

18 **THE COURT:** Yeah, I remember Mr. Stanton.

19 **MR. HIRSCH:** But he had withdrawn and Mr. Mercer had
20 taken over from -- I believe he had withdrawn. I know
21 Mr. Stanton has some personal issues that he had been dealing
22 with, which is why Mr. Mercer got involved. So, yeah, I
23 suppose I could notice the principal of Milestone or the folks
24 in the disclosure statement that were identified as Milestone
25 principals.

1 **THE COURT:** Yeah, why don't --

2 **MR. HIRSCH:** Not lawyers.

3 **THE COURT:** Understood. But why don't you send them
4 notice. Mr. McAlpine, anyone else that he should send notice
5 to?

6 **MR. MCALPINE:** Your Honor, I honestly don't know.

7 **THE COURT:** Okay.

8 **MR. HIRSCH:** So we'll send those.

9 **THE COURT:** Yeah, send notice to the principals.

10 **MR. HIRSCH:** Thank you.

11 **THE COURT:** Thank you.

12 **THE CLERK:** (Inaudible)

13 **THE COURT:** No, we're talking about the motion to
14 strike today. We're -- yeah, let me make sure. Yeah, we're
15 resetting the motion for sanctions, the motion for sanctions,
16 Docket 83 in the Milestone adversary proceeding, we're going to
17 reset that to July 2nd at 1:30 p.m.

18 **THE CLERK:** (Inaudible)

19 **THE COURT:** We're going to hear those right now.

20 **THE CLERK:** (Inaudible)

21 **THE COURT:** That's correct, we're going to hear those
22 right now, the motion to strike and the motion to dismiss.

23 **MR. HIRSCH:** And, Your Honor, on the Milestone matter
24 I did notice that Mr. Ali Choudhri is in the courtroom who is
25 one of the principals of Milestone.

1 **THE COURT:** Okay.

2 **MR. HIRSCH:** So I do intend to notice Mr. Choudhri
3 formally in writing of the notice of hearing, but I did just
4 want to make the record that he is here.

5 **THE COURT:** Okay. Mr. Choudhri, did you want to say
6 anything? Did you understand? If you want to say something,
7 you have to come up to get on the audio record.

8 Good afternoon, Mr. Choudhri. Did you understand
9 what's going on?

10 **MR. CHOUDHRI:** A little bit, yes, Your Honor.

11 **THE COURT:** Okay. So in the Milestone adversary
12 proceeding, the Court has reset a motion for sanctions that was
13 set for today, reset it for July 2nd at 1:30 p.m.

14 **MR. CHOUDHRI:** Yes, Your Honor.

15 **THE COURT:** Okay.

16 **MR. CHOUDHRI:** And the attorney I was working with is
17 Mr. Mercer --

18 **THE COURT:** Yeah.

19 **MR. CHOUDHRI:** And he unfortunately passed and
20 there's some commonality with Otisco and Milestone and
21 Mr. Mercer was assisting in helping and it's just -- I want to
22 request Your Honor if Your Honor can just allow a little bit of
23 time so we can get counsel for Otisco and Milestone.

24 **THE COURT:** The Court's already ruled on the motion
25 for continuance as to those issues. Okay?

1 **MR. CHOUDHRI:** Thank you.

2 **THE COURT:** Thank you, Mr. Choudhri.

3 All right. So both your motions, Mr. Hirsch, and I
4 would suggest we start with the motion to dismiss since it
5 implicates the motion to strike.

6 **MR. HIRSCH:** My colleague Mr. Graham will be handling
7 these motions.

8 **THE COURT:** Okay. Mr. Graham.

9 **MR. GRAHAM:** Good afternoon, Your Honor, Robert
10 Graham for the debtor RIC Lavernia LLC and its co-defendant TIG
11 Romspen US Master Mortgage.

12 We're here on a motion to dismiss or in the
13 alternative for summary judgment on the plaintiff's complaint.
14 Before I begin I think in the interest of efficiently if my --
15 if it pleases the Court I might to move to admit all of the
16 debtor's and TIG Romspen's exhibits into evidence. Those are
17 Exhibits A, B, C, D, E, F and G. I have binders ready for the
18 Court.

19 **THE COURT:** Okay. Have you given a copy to
20 Mr. McAlpine?

21 **MR. MCALPINE:** Your Honor, I would object to this. I
22 haven't been served with any of the papers in relation to the
23 adversary proceeding. I have no notice. I didn't have no
24 notice that it was even filed, there was a motion to dismiss
25 that was even filed until Friday when I spoke to Mr. Hirsch.

1 If I'm not -- I wasn't served with any of the
2 documents related to this. I didn't file it. So I haven't
3 seen this to know if I have any objections to it.

4 **MR. GRAHAM:** Your Honor, if I may respond?

5 **THE COURT:** Please.

6 **MR. GRAHAM:** We filed a witness and exhibit list on
7 Wednesday of last week. Those were served on counsel of record
8 for Otisco. Mr. McAlpine just made his appearance in this
9 adversary proceeding this morning with his motion to continue,
10 so that is why he did not receive service of the witness and
11 exhibit list. But the counsel of record, as of Wednesday, who
12 appears to not be here today did receive the witness and
13 exhibit list.

14 **THE COURT:** Mr. Rayome?

15 **MR. GRAHAM:** Yes, Your Honor. Mr. Rayome, it's kind
16 of unclear who is counsel because we have the same issue here.
17 Mr. Rayome signed the complaint. Paul Kirkland filed it under
18 his CMECF credentials. So it is again unclear who is counsel
19 of record.

20 **THE COURT:** Okay. Your exhibit list shows it was
21 served via e-mail on both Mr. Rayome and Mr. Kirkland, correct?

22 **MR. GRAHAM:** Right, right, just as a matter of
23 caution.

24 **THE COURT:** Okay. Go ahead.

25 **MR. MCALPINE:** Your Honor, I would renew our motion

1 for continuance on this basis. Mr. Rayome is not here, he's
2 indisposed and I'm in the position of having to represent this
3 party without -- in the adversary proceeding without having any
4 prior notice of the exhibits or basis for them.

5 **MR. HIRSCH:** Your Honor, we would oppose that renewed
6 motion to continue.

7 **MR. MCALPINE:** Your Honor, may I have a minute?

8 **THE COURT:** Please.

9 **(Pause)**

10 **MR. MCALPINE:** Your Honor, I just -- I renew our
11 motion and you may oppose the --

12 **THE COURT:** So give me just a second.

13 **(Pause)**

14 **THE COURT:** When did you become counsel for Otisco,
15 Mr. McAlpine?

16 **MR. MCALPINE:** I filed one document on -- to answer
17 your question, March 26th. But that was in the bankruptcy case
18 and the adversary case I didn't appear in today. I did not
19 appear in it until today when I filed my notice of motion,
20 which was filed -- because I was erroneously assuming that by
21 filing in the main case that it would be treated as having been
22 filed in both, but I wanted to try to correct that issue as
23 much as I could, but Your Honor has already ruled on that. But
24 I was not counsel of record in the adversary proceeding until
25 this morning.

1 **THE COURT:** Okay. So I'm going to overrule the
2 objection. Mr. Rayome got notice and it appears as if
3 Mr. Kirkland got notice. If they were not going to show up
4 today and if you were going to show up at the last minute, they
5 certainly had the opportunity to send you these documents and
6 to ask you to do things on behalf of Otisco. So I'm going to
7 overrule that objection.

8 **MR. MCALPINE:** And, Your Honor, I would object to the
9 Exhibits A, B, C, D, E, F and G as hearsay.

10 **THE COURT:** Can I see them please?

11 **MR. GRAHAM:** Yes, sorry, Your Honor.

12 **THE COURT:** Are they the same as what's attached to
13 the motion?

14 **MR. GRAHAM:** Yes, Your Honor. May I approach?

15 **THE COURT:** Please.

16 Okay. Hearsay objection, Mr. Graham?

17 **MR. GRAHAM:** Your Honor, these are certified copies
18 of public records which are self-authenticating under Federal
19 Rule of Evidence 902, subsection 4. And for which the Court
20 may take judicial notice for purposes of 12(b)(6) motion
21 pursuant to Federal Rule of Evidence 201.

22 **MR. MCALPINE:** May I respond?

23 **THE COURT:** Please.

24 **MR. MCALPINE:** There's no certificate associated with
25 any of these that would establish their authenticity, that's

1 first of all. And second of all, a Rule 12(b)(6) motion is a
2 motion to dismiss based on a pleadings defect. The Court
3 shouldn't and does not need to consider evidence of this nature
4 in deciding whether or not the pleadings -- whether the case
5 should be dismissed based on the pleadings.

6 **MR. GRAHAM:** Your Honor, to his first point, the last
7 pages of Exhibits A, B, and D contain the certification of the
8 Wilson County Clerk. And in our motion we cited a plethora of
9 case law supporting our argument that the Court may take
10 judicial notice of these certified copies of public records for
11 purposes of a 12(b)(6) motion.

12 **MR. MCALPINE:** Your Honor, I had not seen, due to the
13 abbreviated time that I've had to review these documents, I had
14 not seen those certificates on the last page, I didn't
15 recognize them as such. I'll withdraw my objections to A, B,
16 C, and D and not to E, F or G.

17 **THE COURT:** Okay. So, Mr. Graham, as to E, F and G?

18 **MR. GRAHAM:** Your Honor, Exhibit E, F and G were all
19 of the documents that were filed on this Court's docket, so
20 we'd ask that the Court take judicial notice of its own
21 records.

22 **MR. MCALPINE:** Your Honor, the filing of a document
23 into the court clerk's record doesn't establish an exception to
24 the rule against hearsay. Judicial notice is for things that
25 are common knowledge like how many days in a year there are or

1 other facts that can just be established through judicial
2 notice.

3 You know, the authenticity of the document or that
4 it's a self-authenticating public record or business record or
5 what have you is not something that can be -- in other words,
6 you can't do an end run around the rule against hearsay just by
7 filing a document.

8 **MR. GRAHAM:** Your Honor, I can go through each
9 exhibit and respond to the hearsay objection if you wish.
10 Exhibit E is --

11 **THE COURT:** No, don't. Don't. The Court's going to
12 overrule the objection, but with the caveat that the Court is
13 going to accept these into evidence, but not necessarily for
14 the truth of the matter asserted. That's what the debtor
15 believes assets are in its estate and there are schedules filed
16 in this case. And so beyond that, the Court will admit them.

17 **(Debtor's Exhibits A through G received in evidence)**

18 **MR. GRAHAM:** Thank you, Your Honor.

19 **THE COURT:** Okay. All right.

20 **MR. GRAHAM:** All right. So I think it's helpful to
21 get --

22 **THE COURT:** All right. Mr. McAlpine, would you
23 please have a seat for a second now while he proceeds? I think
24 if we're done with evidence. Okay. Thank you. Go ahead,
25 Mr. Graham.

1 **MR. GRAHAM:** Yes, Your Honor. I think it may be
2 helpful to give this Court some context about the background of
3 this bankruptcy case and Otisco's involvement or lack thereof.

4 The debtor's bankruptcy case has been pending for
5 nearly a year now. And since the beginning, the debtor has
6 maintained that its sole asset is certain real property located
7 in Wilson County, Texas.

8 You will see on Exhibit G attached to the debtor's
9 amended petition which is Exhibit G is a description of that
10 property and the debtor also scheduled that property on
11 Exhibits E and F.

12 Until recently nobody questioned the debtor's
13 ownership of the property. Early last month however Otisco the
14 prior owner of the Wilson County property initiated this
15 adversary proceeding, contending that the debtor does not own
16 the Wilson County property, and instead Otisco is the rightful
17 owner.

18 The evidence I'll walk through today will establish
19 conclusively that that is not true. The debtor is the rightful
20 owner of this property and Otisco -- any interest Otisco had in
21 the property was extinguished by way of a non-judicial
22 foreclosure sale that was properly noticed.

23 So to that point, Your Honor, Otisco indeed owned
24 this disputed property at one time. It owned the property
25 subject to a deed of trust in favor of TIG Romspen, which is

1 the co-defendant in this matter, to secure a portion of
2 indebtedness by Otisco's affiliate, which is the Galleria Loop
3 Noteholder LLC. Exhibit B is a copy, a certified copy of that
4 deed of trust executed by Otisco.

5 When Galleria Loop Noteholder defaulted on its
6 indebtedness TIG Romspen initiated foreclosure proceedings. To
7 that end, TIG Romspen among other things appointed substitute
8 trustees, which is evidenced by Exhibit A, a certified copy of
9 the appointment of substitute trustees.

10 The debtor gave proper notice of the foreclosure
11 sale, which is evidenced by Exhibit C. And ultimately through
12 its appointed substitute trustee, TIG Romspen, sorry, conducted
13 the foreclosure sale on February 6th, 2024 and that's evidenced
14 by Exhibit D, the deed of trust conveying the property to the
15 debtor.

16 When the debtor acquired the property through the
17 foreclosure sale any interest that Otisco had in that property
18 was extinguished. Fast forward over a year later and here we
19 are for the first time Otisco by its complaint, is asserting
20 the foreclosure sale was defective and that the debtor and the
21 estate cannot truly own the property.

22 Now, Otisco's entire complaint stands on one single
23 factual allegation. It's claim that TIG Romspen's foreclosure
24 against the property was invalid because, according to Otisco,
25 TIG Romspen conducted the sale without a duly appointed

1 substitute trustee.

2 Exhibit A which has already been admitted into
3 evidence conclusively proves otherwise. That is the document
4 through which TIG Romspen appointed its substitute trustee and
5 it was properly recorded in the Wilson County property records
6 on January 3rd, 2024, weeks before the foreclosure sale.

7 I think it's important to note that all of these
8 publicly reported records that have been admitted into evidence
9 were easily accessible by Otisco and its attorneys prior to
10 filing this complaint. Yet, via a very simple on line search
11 of the Wilson County public records, yet they filed this
12 complaint anyways, apparently without having doing their
13 homework first.

14 Because the only alleged defect that the foreclosure
15 sale asserted in Otisco's complaint is that TIG Romspen did not
16 properly appoint a substitute trustee to denote the foreclosure
17 sale, and because the evidence I just walked through
18 establishes that that is untrue, their complaint is left with
19 no factual basis on which to stand.

20 Therefore, dismissal, under Rule 12(b)(6) is
21 appropriate here. And I think it's important to also note
22 dismissal with prejudice is proper here because the other
23 exhibits establish not only that Otisco's allegation that the -
24 - that TIG Romspen did not appoint a substitute trustee is
25 false, but the other exhibits also establish that the

1 foreclosure sale was conducted appropriately and there were no
2 defects.

3 So dismissal with prejudice, we would ask for
4 dismissal with prejudice under Rule 12(b)(6). Sorry, Your
5 Honor, I just want to point out, there's been no response filed
6 to the motion to dismiss. It's a dispositive motion, and so
7 responses were due within 21 days as required by Local Rules
8 7007-1, Subsection (b)(2) and 7012-1, no response was filed.
9 So I take it the motion appears to be unopposed.

10 **THE COURT:** Okay. Thank you.

11 **MR. GRAHAM:** Thank you, Your Honor.

12 **THE COURT:** Mr. McAlpine?

13 **MR. MCALPINE:** Well, Your Honor, I can't argue that
14 there wasn't any response filed. I was not of record, there is
15 an opposition to the motion. I'd like to renew our motion for
16 continuance on -- to rectify the issues that have been raised
17 previously. I'm guessing the Court's going to deny that.

18 **THE COURT:** Denied.

19 **MR. MCALPINE:** Thank you, Your Honor. So there's a
20 couple of things. First of all, the factual allegations claim
21 to be false is no grounds for a Rule 12(b)(6) motion. The sole
22 purpose of, you know, pleading is to raise legal theories and
23 provide sufficient factual enhancement to show what those legal
24 theories are based on, as a factual matter, and then state
25 claims for relief just in general.

1 And when there's a dispute about a material fact
2 that's the purpose of either an evidentiary hearing or a motion
3 for summary judgment. And they disagree with the factual
4 allegation that's in the pleading does not fail to state a
5 claim that merely means there's a dispute about the claim,
6 which is the reason why the petition was filed.

7 So the fact that they don't agree with one of the
8 contentions in the adversary complaint is no basis for
9 dismissal. At best, the Court should deny the motion entirely
10 and state that it's a fact issue to be raised at a later date
11 after discovery or, alternatively, given opportunity to replead
12 if it's somehow an actual pleadings issue.

13 So that's the first point that I'd like to make.
14 Second of all, I don't believe that it's the only allegation
15 that's made that there's a lack of an appointment of a
16 substitute or a subsequent trustee. There's allegations that
17 the foreclosure itself was improper and fraudulent based on the
18 initial sale of the property for \$100,000 and then TIG Romspen
19 calling in and getting them to take a mulligan on it and sell
20 it for I believe \$2 million.

21 And I believe Mr. Choudhri would be able to testify
22 today that he has an e-mail from Mr. Hirsch that states that if
23 the property was sold for \$100,000 which is significantly less
24 than the amount that was stated on the claims registry, as far
25 as I can tell.

1 So there's additional arguments that are stated in
2 the petition, including improper foreclosure and fraud that --
3 I mean, establishing the existence of a subsequent trustee
4 doesn't even address all of the allegations that are made.

5 So at most, if the Court converts the 12(b)(6) motion
6 to a motion for summary judgment, then the theory based on
7 subsequent trustee would have to be contradicted by a witness.
8 Would the Court permit us to call a witness to give testimony
9 on this issue, under the circumstances?

10 **THE COURT:** No.

11 **MR. MCALPINE:** Okay.

12 **THE COURT:** I'm sorry, but I've got no exhibit and
13 witness list, I've got nothing in advance of the hearing and
14 there was no response to the motion. And I'm looking at the
15 complaint itself. You said there were other causes of action.
16 I see two causes of action. One is declaratory judgment
17 request, that essentially says that the foreclosure was
18 improperly done. And the second is a constructive trust cause
19 of action. What am I missing?

20 **MR. MCALPINE:** Your Honor, I don't know. I don't
21 believe that you're missing anything. I don't have a copy of
22 the adversary petition in front of me and I believe though that
23 the constructive trust argument doesn't depend on the
24 employment of a subsequent trustee point or am I mistaken about
25 that as well?

1 **THE COURT:** No, it does.

2 **MR. MCALPINE:** It does.

3 **THE COURT:** Paragraph 30, the foreclosure was
4 conducted without a properly appointed trustee, violating Texas
5 Property Code 51.0075, fundamental principles of trust law and
6 due to the defective nature of that trust debtor was unjustly
7 enriched and so you're asking for a constructive trust over the
8 property.

9 **MR. MCALPINE:** Okay.

10 **THE COURT:** Or the complaint is.

11 **MR. MCALPINE:** Understood.

12 **THE COURT:** So they're both tied into the legitimacy
13 of foreclosure proceeding.

14 **MR. MCALPINE:** Understood, Your Honor.

15 **THE COURT:** Anything else?

16 **MR. MCALPINE:** No, Your Honor, I don't have anything
17 further. I mean, I would simply reiterate that we filed a
18 motion for continuance based on the circumstances we've already
19 discussed and that has encumbered our ability to make a
20 meaningful opposition to these motions.

21 **THE COURT:** Understood. Again, you didn't file one
22 in the adversary proceeding. You showed up here at the hearing
23 and that's the first time I had any official notice that you
24 wanted a continuance in the adversary proceeding. You file the
25 motion for continuance in the case.

1 **MR. MCALPINE:** Understood, Your Honor.

2 **THE COURT:** Okay. Thank you. Mr. Graham, rebuttal?

3 **MR. GRAHAM:** Your Honor, I really don't have much
4 further to say, though I'm happy to address any questions that
5 the Court has. I would ask that the Court grant our motion to
6 dismiss this case with prejudice under Rule 12(b)(6) or if the
7 Court finds it necessary to do so, to convert this to a motion
8 for summary judgment and grant summary judgment in the
9 defendant's favor against the complaint also with prejudice.

10 **THE COURT:** How do you think I can do this under
11 12(b)(6) without the evidence you put in to place?

12 **MR. GRAHAM:** Sure, Your Honor. The Fifth Circuit has
13 already settled this issue in Norris v Hearst Trust, that's 500
14 F3d 454. The Fifth Circuit says it is clearly proper in
15 deciding a 12(b)(6) motion to take judicial notice of the
16 matters of public record.

17 Exhibit A is really the only thing the Court needs.
18 It's a matter of public record, certified copy so it's self-
19 authenticating and it conclusively proves that the one factual
20 allegation as part of the complaint is false.

21 **THE COURT:** Okay.

22 **MR. GRAHAM:** That is all, Your Honor.

23 **THE COURT:** Thank you. Mr. McAlpine?

24 **MR. MCALPINE:** Your Honor, I don't have anything to
25 add.

1 **THE COURT:** Nothing more? Okay.

2 All right. The Court is going to grant the motion to
3 dismiss under 12(b)(6), taking judicial notice and actually
4 having taken into evidence these other exhibits to the extent
5 it doesn't work under 12(b)(6), the Court will grant it as a
6 summary judgment motion.

7 All right. Let's hear the motion to strike.

8 **MS. SAMAVATI:** Your Honor?

9 **THE COURT:** I'm sorry, are you a lawyer?

10 **MS. SAMAVATI:** Yes, I am. Gia Samavati --

11 **THE COURT:** Please come near a microphone.

12 **MS. SAMAVATI:** Gia Samavati, Your Honor.

13 **THE COURT:** Uh-huh.

14 **MS. SAMAVATI:** Mr. Choudhri would like to address the
15 Court, is that permitted?

16 **THE COURT:** Not just yet. Not just yet. Let me hear
17 the motions and then maybe after that. Okay?

18 **MS. SAMAVATI:** Thank you, Your Honor.

19 **THE COURT:** Okay.

20 **THE CLERK:** (Inaudible)

21 **THE COURT:** Is the order in the file all right,
22 Mr. Graham?

23 **MR. GRAHAM:** Sorry, Your Honor?

24 **THE COURT:** Is the order in the file all right on
25 that one?

1 **MR. GRAHAM:** Yes, Your Honor.

2 **THE COURT:** Okay.

3 **MR. GRAHAM:** And just to clarify, was that a
4 dismissal with prejudice?

5 **THE COURT:** That is a dismissal with prejudice.

6 **MR. GRAHAM:** Okay. Thank you, Your Honor.

7 On the motion to strike, I'd like to again move to
8 admit Exhibits A, B, C, D, E, F, G for purposes of the motion
9 to strike.

10 **THE COURT:** Mr. McAlpine?

11 **MR. MCALPINE:** No objections.

12 **THE COURT:** Okay. The Court will admit the same
13 exhibits for purposes of the motion to strike in the case.

14 **(Debtor's Exhibits A through G received)**

15 **MR. GRAHAM:** So Otisco's objection to confirmation of
16 the debtor's Chapter 11 plan really stems from the same thought
17 premise as its complaint in the adversary proceeding, its
18 incorrect assertion of a defective foreclosure sale, and
19 therefore a dispute about the debtor's ownership of the
20 property.

21 Crucially, before really getting to the merits of
22 whether the foreclosure sale was proper or not, Otisco lacks
23 standing to object to confirmation of the debtor's plan in the
24 first place. It's not a party in interest to this bankruptcy
25 case. Under Section 1109(b) of the Bankruptcy Code there's a

1 list of enumerated categories under which Otisco does not fall.

2 **THE COURT:** Non-exclusive list.

3 **MR. GRAHAM:** Non-exclusive list, you're right, Your
4 Honor. And I'll address that as well. But first Otisco's not
5 scheduled as a creditor. You'll see that in Exhibits E and F.

6 **THE COURT:** Does it matter that they filed a lawsuit?

7 **MR. GRAHAM:** Your Honor, as of now the lawsuit has
8 been dismissed.

9 **THE COURT:** I got it, but had the lawsuit not been
10 dismissed?

11 **MR. GRAHAM:** No, Your Honor, because the evidence
12 that I intended to present conclusively establishes that the
13 foreclosure was proper and that any property interest that
14 Otisco had in this Wilson County property was extinguished. So
15 Otisco has no direct pecuniary interest that would be affected
16 by the plan confirmation.

17 Second, I would just point out that Otisco has not
18 filed a proof of claim in this case and the bar date for doing
19 so has long past. So I would just ask that the Court take
20 judicial notice of its claim register to that end.

21 **THE COURT:** The Court will take judicial notice of
22 the claims register.

23 **MR. GRAHAM:** Accordingly, Otisco is not an estate
24 creditor impacted by the plan. Now, it is true that Section
25 1109(b) is a non-exclusive list. Courts have recognized in

1 exceptional cases that a party may have standing even though
2 they do not fall in that enumerated list of parties in interest
3 under Section 1109(b). But for such non-enumerated parties to
4 establish standing, they must show pecuniary interest that are
5 directly affected by the bankruptcy proceeding.

6 So this is an even more, you know, exacting standard
7 requiring a higher causal nexus between act and injury, the
8 case law reads. Otisco could not meet this exacting standard
9 because as demonstrated by Exhibits A, B, C and D Otisco has no
10 remaining interest in the property. Any interest it once had
11 was extinguished by the foreclosure sale. Because Otisco lacks
12 standing, we would ask that its objection to the plan be
13 stricken.

14 **THE COURT:** Okay. Mr. McAlpine?

15 **MR. MCALPINE:** Very briefly, Your Honor. I mean my
16 understanding is that the Court made a ruling already on the
17 issue of the existence of a subsequent trustee under the Rule
18 12(b)(6) motion and the premise of the objection is the
19 accuracy of the allegations that are stated in the adversary
20 complaint.

21 So the point -- and I assume that the Court took
22 these in that order intentionally, based on that. I mean,
23 essentially the issue is moot, all we can do is object to the
24 ruling on the motion to dismiss, which I assume Your Honor is
25 going to overrule. And the -- I mean, absent an adversary

1 complaint that is viable, there's no standing to object.

2 So pursuant to the Court's ruling from ten minutes
3 ago, I don't have a response other than what I've already
4 stated, which I would restate at this point.

5 **THE COURT:** Okay. And then let me talk to
6 Mr. Graham.

7 Mr. Graham, I didn't see truck insurance cited in
8 here at all. Did you look at truck insurance?

9 **MR. GRAHAM:** Truck insurance, no, Your Honor, it's
10 not ringing a bell.

11 **THE COURT:** U.S. Supreme Court case a couple of years
12 ago, a year or two ago. So the -- I went back and I looked at
13 the objection itself and there are several things in there, let
14 me find it. I had it here.

15 Okay. The objection cites other provisions,
16 paragraph 8 cites 1129(a)(3), paragraph 9 cites 1129(a)(5). It
17 talks about other rights that Otisco might have vis a vis the
18 plan other than just this right under their foreclosure
19 interest, we'll call it, right?

20 And so are you saying that they don't have the right
21 to assert those objections?

22 **MR. GRAHAM:** Well, Your Honor, the entire objection
23 is premised on this idea that Otisco has property interests in
24 estate property and we've established through the evidence
25 today that Otisco has no property interest in this -- in the

1 property of the estate. And because Otisco is neither a
2 scheduled creditor nor a party who has filed a proof of claim
3 it's not impacted in any way by confirmation of the plan.

4 So, you know, if it does happen in interest, a plan
5 objection was not the way to assert that interest.

6 **THE COURT:** Okay. All right. Anything else?

7 **MR. GRAHAM:** That is all, Your Honor.

8 **THE COURT:** All right. So the -- did you have any
9 follow up, Mr. McAlpine?

10 **MR. MCALPINE:** No, Your Honor.

11 **THE COURT:** Okay. So the Court is going to grant in
12 part and deny in part the motion to strike. I will grant it to
13 the extent that the objection raises any issue related to the
14 improper foreclosure sale, but the Court's view of the
15 objection is much broader than that and Otisco might have
16 reason to object to the injunction that's in the plan or other
17 discharge provisions in the plan. And so I'm not going to
18 strike it as to those other things that don't deal with the
19 impropriety of the initial foreclosure sale. Okay?

20 **MR. HIRSCH:** Your Honor, if I may be heard?

21 **THE COURT:** Please.

22 **MR. HIRSCH:** Just on that last piece, Your Honor,
23 it's not the debtor's position that for example the provisions
24 you cited, 1129(a)(3), 1129(a)(5), it's not our position that
25 in striking the objection that the Court is concluding that the

1 plan as to those provisions are acceptable and confirmable.

2 **THE COURT:** No, that's correct. I'm not saying
3 they're appropriate objections. All I'm saying is they're
4 entitled to raise them, that they have the standing to raise
5 those objections.

6 **MR. HIRSCH:** And I think our -- and again, you've
7 made your ruling clear, I just want to make sure that we
8 understand that from our perspective the way that we read their
9 objection, is that the only standing that they bring to raise
10 any objections is through their purported interest in the
11 property.

12 And once their purported interest in the property is
13 deemed non-existent, then their ability, their standing to
14 raise prejudice as to any portions of the plan we believe also
15 is non-existent. So maybe we'll address that more at
16 confirmation --

17 **THE COURT:** Understood.

18 **MR. HIRSCH:** -- and that may be the more appropriate
19 time. I just wanted to make sure the record is clear on that.

20 **THE COURT:** That's correct.

21 **MR. HIRSCH:** Thank you, Your Honor.

22 **THE COURT:** Thank you.

23 Yeah, the Court will do the order on that one.

24 **THE CLERK:** Thank you.

25 **THE COURT:** All right. Anything else? Mr. Choudhri?

1 Mr. Hirsch, let me hear from the counsel first.

2 **MR. HIRSCH:** Yeah, I -- the debtor and TIG Romspen
3 don't have anything further. I'm not sure what position
4 Mr. Choudhri has, so hopefully that's the first question from
5 the Court. So --

6 **THE COURT:** Okay.

7 **MR. HIRSCH:** -- I am a little eager to stand up and
8 object when I hear things that I may feel are worthy of
9 objection, but I'll let the Court take the first guidance on
10 that.

11 **THE COURT:** Okay. Mr. McAlpine?

12 **MR. MCALPINE:** No, Your Honor, I don't -- it's my
13 understanding that Mr. Choudhri wants to speak.

14 **THE COURT:** Okay. All right. Mr. Choudhri, I'm --
15 yeah, I'm going to do that. I'm going to swear you in, please
16 state your name for the record first and spell your last name.

17 **MR. CHOUDHRI:** Ali Choudhri, A-L-I first name. Last
18 name is C-H-O-U-D-H-R-I.

19 **THE COURT:** Thank you. Get your hand up, keep it up.

20 **ALI CHOUDHRI, SWORN**

21 **THE COURT:** Okay. Go ahead.

22 **MR. CHOUDHRI:** Your Honor, I just wanted to bring a
23 few things to your attention. I would plead to the Court and I
24 have communications with Mr. Eric Taube and Mr. Mercer and
25 Mr. Mercer drafted and was in the process, and I also have

1 videos of the auction and e-mails I've had personally with
2 Mr. Hirsch about the auction. I was at this auction. This is
3 approximately 2,000 lots in Wilson County in Lavernia. This
4 started off as a cross-collateralized deal where TIG Romspen
5 convinced Otisco to provide additional collateral behind
6 Milestone's first lien against the property.

7 And the minute it did, it immediately posted both the
8 other property, the 1001 WL property and the Lavernia property
9 for foreclosure. And I was at this auction, Your Honor, and
10 the trustee stated that she was going to credit bid the entire
11 amount. It was crossed to another property --

12 **MR. HIRSCH:** Your Honor --

13 **THE COURT:** Mr. Hirsch?

14 **MR. HIRSCH:** I need to object first of all. There's
15 hearsay coming in but I don't understand to what extent this
16 testimony is being --

17 **THE COURT:** The evidence is closed. The Court has
18 already ruled on the other things and so Mr. Choudhri is I
19 think just trying to educate me.

20 **MR. HIRSCH:** Okay. Thank you.

21 **MR. CHOUDHRI:** Thank you, Your Honor. And, Your
22 Honor, my only request, Your Honor, would be that if there's a
23 way I could present to Your Honor maybe some communications and
24 -- between Mr. Mercer and myself and Otisco and the situation
25 and kind of what -- and there was a foreclosure sale that I was

1 at where the property was struck sold to another buyer for
2 \$550,000 buy this trustee. And the trustee then got -- spoke
3 to Mr. Wes Roitman for Romspen and then started the sale again
4 and sold it for \$2 million and it's on video. I have this on
5 video. And I e-mailed Mr. Hirsch and I asked him what did the
6 property sell for, what happened at the sale. And he said it
7 went back to TIG Romspen for 100,000.

8 Subsequent TIG Romspen created a new entity called
9 RIC Lavernia and threw it into bankruptcy. After the
10 injunction by Milestone was or the injunction that TIG Romspen
11 requested was denied, allowing Milestone to foreclose. And RIC
12 Lavernia transferred, which I believe is like a runaway debtor,
13 back date filing and I'm just requesting, Your Honor, just a
14 week or two weeks, or at the very minimum, Your Honor, if the
15 ruling can be without prejudice to allow counsel to actually
16 correctly and I apologize, Mr. -- the circumstance is very
17 unique and it's not in any way delay. It -- there's a lot on
18 the line here, and I would just ask Your Honor if Your Honor
19 would at the very minimum consider it without prejudice so the
20 information could be put forth and I wish things could have
21 been different and I wish the unforeseen events didn't take
22 place.

23 Mr. Mercer was representing me in many cases as a
24 creditor, and I have a real party interest in this and he was
25 in the process of bringing in some additional help.

1 Unfortunately, earlier we had another great lawyer who got ill,
2 Mr. Peter Stanton (phonetic) and he shut down his practice and
3 then this circumstance with Mr. Mercer. And if Your Honor
4 would allow maybe a little bit of time I would present to you
5 the communications and you would see that Mr. Mercer was
6 instrument and integral to the representation and the direction
7 for Otisco. And this was very unexpected and things could have
8 been done differently, that's the only thing I would mention,
9 Your Honor.

10 And Mr. Hirsch is -- there is some real disclosure
11 issues on these other bankruptcies with Romspen has filed
12 bankruptcy and transferred and it's a lot and I can't say it
13 all, articulate it correctly. I would just request, Your
14 Honor, if Your Honor would consider a short recess or some time
15 for counsel for Otisco to present these things to you and some
16 evidence or at the very minimum where Romspen is now getting a
17 windfall because this property they did not foreclose it
18 properly.

19 I have been to several hundred sales myself. I've
20 been in -- started to go to RTC and SML as a child with my dad,
21 as a young man and I've bought properties at the First Tuesday
22 as a teenager and I can tell Your Honor that the evidence that
23 Mr. Hirsch has represented to you and Mr. Roitman have
24 represented about what the property sold for at the auction to
25 other courts it's not factual and I can bring that forward and

1 prove that, Your Honor, because I have the video of the
2 auction. And I just would ask Your Honor to not make it with
3 prejudice, so there's an opportunity to present to Your Honor.

4 **THE COURT:** So, Mr. Choudhri, that opportunity was
5 today, right. And no response was made to the motion that was
6 filed and Mr. Mercer again the Court will note is a fantastic
7 attorney, but Mr. Mercer was not counsel for Otisco.

8 Mr. Mercer was not on the pleadings anywhere and
9 counsel didn't respond. Mr. McAlpine showed up here the last
10 day and did a yeoman's job trying to do his best to get this
11 done, but nonetheless that time has passed. And so the Court
12 has closed the evidence and the Court's dismissal on the Otisco
13 matter is with prejudice. Okay?

14 **MR. CHOUDHRI:** And --

15 **THE COURT:** I'm not taking evidence. I'm not going
16 to look at any of that stuff. Anything that you want to
17 present, please present through an attorney.

18 **MR. CHOUDHRI:** Yes, Your Honor, yes, I'll do that, I
19 just wanted to apologize for any inconvenience.

20 **THE COURT:** I'm not looking for an apology, but I'm
21 just telling you I'm sorry that your attorney was unable to
22 accomplish what it was that you wanted to try and communicate
23 today during the hearing.

24 **MR. CHOUDHRI:** Yes, Your Honor, and I have a medical
25 record of Mr. Rayome. He's -- unfortunately that's just --

1 that's the --

2 **THE COURT:** So Mr. Rayome has number one, been in
3 since May 9th, no motion for continuance was filed until
4 actually not in the case, none was ever filed. And as
5 Mr. Hirsch went through a whole plethora of other pleadings
6 were filed by Mr. Rayome. And so I have trouble judging the
7 credibility of him without him being here, but I -- even the
8 declaration, the unsworn declaration was unsigned. You can't
9 sign with a /s/ when it's not your pleading. There was nothing
10 there for me to rely on as to Mr. Rayome.

11 And based upon the fact that he filed a bunch of
12 other things, he lacks any sort of credibility, even if I was
13 to try and rely on it. And so I am -- I understand what it is
14 you're trying to communicate, but I'm not changing my mind.
15 All right?

16 **MR. CHOUDHRI:** Thank you, Your Honor. If you would
17 consider a motion I'm assuming if -- once counsel --

18 **THE COURT:** Get counsel. You're entitled to appeal
19 my order, you're entitled to do whatever you want to do.

20 **MR. CHOUDHRI:** If you'd reconsider -- consider
21 reconsidering I guess, if a proper motion is brought forth by
22 counsel, Your Honor?

23 **THE COURT:** You're entitled to file whatever it is
24 you'd like to file, Mr. Choudhri.

25 **MR. CHOUDHRI:** Thank you, Your Honor.

1 **THE COURT:** All right?

2 **MR. CHOUDHRI:** Thank you.

3 **THE COURT:** All right. Thank you. Anyone else? You
4 may be excused.

5 **MR. HIRSCH:** Thank you, Your Honor.

6 **THE CLERK:** All rise.

7 **THE COURT:** Thank you. We'll be in recess.

8 **(Proceedings concluded at 3:29 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.



June 4, 2025

Signed

Dated

TONI HUDSON, TRANSCRIBER